IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: EUGENIA BUZOIU : CIVIL ACTION
:

NO. 01-5597

ORDER AND MEMORANDUM

AND NOW, this 28th day of January, 2002, upon consideration of the Motion **by** Appellee to Strike References to Evidence Not of Record (Docket No. 9), the appellant's opposition thereto, and following oral argument, IT IS HEREBY ORDERED THAT the motion is GRANTED in part and DENIED in part, for the reasons explained **below.**

The appellee moves to strike certain materials attached to the appellant's brief because they were not part of the record before the Bankruptcy Court. The appellant argues that the Court should take judicial notice of these materials as either legislative or adjudicative facts.

Legislative facts are used by the Court in interpreting or extending legislative enactments or in expanding the common law. See **Fed.** R. Evid. 201, advisory *cmte note (a).* They do not change from case to case, but apply universally. Courts have discretion to take notice of them. See generally Weinstein's Federal Evidence § 201.51 (2d ed. 1999); ***see*** also Dunbar **v.**

Triangle Lumber & Supply Co., 816 F.2d 126, 129 (3d Cir. 1987) (taking judicial notice of increasing trend toward dismissal of legal actions); Kessler v. Institute for Rehabilitation, 669 F.2d 138, 141 (3d Cir. 1982) (taking judicial notice of increased delays in postal system).

Adjudicative facts are relevant to a particular case, and concern issues of who did what, where, when, how, and with what motive or intent. See Weinstein's Federal Evidence § 201.02[1]. Taking notice of adjudicative facts is governed by Fed. R. Evid. 201.

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201(b). The Court has discretion to take judicial notice of adjudicative facts on appeal but not where it serves to undermine the fact finding process below. See In re Indian Palms Assocs., 61 F.3d 197, 205 (3d Cir. 1995).

Some of the materials appear to be legislative facts - those listed at (a) and (b) of the appellee's motion: statistics regarding the amount of monies devoted to student loans, from J. Fredericks Volkwein et al., Factors Associated with Student Loan Default Among Difference Racial and Ethnic Groups, 69 J. Higher

Ed. 206 (1998); and information on what percentage of financial aid packages student loans comprise, and the effect on wages of post-secondary school training, from Christopher Farrell, ~~Loans~~ for College Don't **Have** to Crush Grads, Bus. Wk., July 12, 1999, at 147. The Court's finding that these are legislative facts is consistent with the appellant's citing them in the section of his **brief** in which he describes the Student Assistance and Loan Repayment program. The Court will take judicial notice of these materials.

The other materials appear to be adjudicative facts. They are being used by the appellant to try *to* undermine the findings of fact by the Bankruptcy Judge. For example, the appellant uses the banking statistics listed in the motion at (d) to try to show that the debtor could have gotten *a* better paying job in the banking industry, The appellant also uses labor statistics listed at (c) to undermine the Bankruptcy Judge's findings of fact on the value ***of*** the appellee's employment skills, and the impact ***of*** her single parenthood; a homepage listed at (e) to challenge the Bankruptcy Judge's findings on the appellee's eligibility for a child care subsidy; and statistics from the Health and Human Services Department and an IRS publication listed at (f) to argue that the Bankruptcy Judge's finding on the appellee's potential for increased income was

erroneous.

The Court will exercise its discretion not to take judicial notice of these adjudicative facts. It would undermine the fact finding process to allow a party, on appeal, to submit facts relating to the core issues in the case. Nor can the Court find that these facts comport with the requirements of Fed. R. Evid. 201(b). They do not fit within the category described at Fed. R. Evid. 201(b)(1) - facts generally known within the territorial jurisdiction of the trial court. The appellant has also not persuaded the Court that they fit within 201(b)(2) - facts capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned. In addition, the appellant is using them in a way that is speculative. It is arguing that because there are a certain number of jobs in the financial industry, the debtor could have gotten one of those jobs. That is speculative, and inconsistent with the debtor's testimony concerning her job history.

Therefore, the Court will take judicial notice of the materials listed at (a) and (b) of the Motion of **Appellee *to*** Strike References to **Evidence** Not of Record. **It** will not **take** judicial notice of the items designated as (c), (d), (e), or (f)

Mailed 1/31/02 to:
Eugenia Buzzone
David Searles, Esq.
Lynn J. Walker, Esq.
Kevin Callahan
Hon. Thomas M. Jurdorska
Hon. Bruce I. Fox
Joseph Simmons
Hon. Stephen Rasławich
Hon. Diane W. Sigmund

BY THE COURT:

MARY A. McLAUGHLIN, J.

IN THE UNITED **STATES** DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: **EUGENIA BUZOIU**	:	CIVIL ACTION
	:	
	:	NO. 01-5597

ORDER

AND NOW, **this** 28th day of January, *2002*, upon consideration of the **Appeal** of the Pennsylvania Higher Education Assistance **Agency** from the **Bankruptcy** Court order of October *3*, 2001 **(Docket** No. 1), the briefs of the **appellant** and **appellee** in support and opposition thereto, and following oral argument, IT **IS HEREBY** ORDERED THAT the ruling of the Bankruptcy Court is **AFFIRMED**

Having **carefully reviewed** the complete record before the **Bankruptcy** Court and the opinion of the Bankruptcy Judge, the **Court** cannot find that *the* findings *of* fact of the Bankruptcy Judge are **clearly** erroneous. To the contrary, there **is** ample evidence in the record to support the findings of fact, as the Court described those facts during the oral argument in this case. Nor can the Court find that the Bankruptcy Judge has **misapplied** the **law to** the facts of the case. The **Bankruptcy**

Judge, in a thoughtful and **well** reasoned opinion, appears to this Court to have **carefully applied** the applicable precedent of the **Third Circuit.**

BY THE COURT:

MARY A. McLAUGHLIN, J.

Mailed 1/29/02 to:
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